

HOUSE BILL REPORT

HB 2215

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to background checks.

Brief Description: Changing provisions relating to background checks.

Sponsors: Representatives B. Sullivan and Ahern.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 3/1/05 [DPS].

Brief Summary of Substitute Bill

- Simplifies and eliminates duplicative statutes so that the dissemination of background checks are handled under one chapter.
- Eliminates the requirement that before forwarding information to certain persons or agencies requesting a background check that the Washington State Patrol (WSP) redact all information not related to crimes committed against children or other persons, crimes relating to drugs, and crimes relating to financial exploitation.
- Eliminates provisions that are not currently being implemented such as the requirement that disciplinary boards' final decisions and information relating to dependency matters and domestic relations cases be sent to the WSP.
- Requires the prosecuting attorney to notify the Superintendent of Public Instruction, instead of the WSP, if a person employed by a school district pleads guilty to certain offenses.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Kirby and Strow.

Staff: Yvonne Walker (786-7841).

Background:

The Joint Task Force on Criminal Background Check Processes (Task Force) was created by the passage of Engrossed Substitute House Bill 2556 during the 2004 legislative session. The legislation required the Task Force to review and make recommendations regarding how to improve the state's criminal background check processes. The legislation also required the Task Force to report its findings and recommendations to the Legislature.

The Task Force held six public meetings in 2004, and made five recommendations. One of the Task Force's recommendations was to simplify statutes concerning the dissemination of background checks and to repeal portions of RCW 43.43, accordingly. The Task Force found that repealing certain portions of RCW 43.43 would simplify the Washington State Patrol's (WSP) administration of background check requests for non-criminal justice purposes. In addition, the Task Force determined that organizations requesting background checks would receive more complete information about applicants for employment or for volunteer service.

Under RCW 10.97, conviction records may be disseminated without restriction. Criminal history record information that pertains to a matter that is pending in the criminal justice system may also be disseminated without restriction under this law.

Under RCW 43.43, the WSP is authorized to disclose criminal history information of applicants and employees to businesses or organizations in Washington that provide services to persons with a developmental disability, vulnerable adults, persons with a mental illness, or children under 16 years of age. The WSP may also release criminal background information to persons with a developmental disability and vulnerable adults who desire to hire their own employees directly. However, under this statute, the information provided is limited to an applicant's record for convictions of offenses against children or other persons, convictions for crimes relating to financial exploitation if the victim is a vulnerable adult, adjudications of child abuse in a civil action, and any issuance of a vulnerable adult protection order. If the portions of RCW 43.43 were repealed so the references to specific crimes were eliminated, an organization would still be able to request background check information under RCW 10.97 and would receive information on a particular person's convictions and any charges pending for the last year.

Another problem that was brought to the Task Force's attention is that the WSP often does not receive the administrative decisions and civil findings required by statute. In addition, the Task Force learned that, in order to be compatible with the WSP databases that are used as a basis for performing background checks, records concerning civil verdicts and adverse results of administrative proceedings, must include fingerprints. In practice, most civil and administrative decisions reported to the WSP do not include fingerprints and, therefore, cannot be indexed in the WSP's records that serve as a basis for performing background checks.

Summary of Substitute Bill:

If a background check is requested for non-criminal justice purposes, the WSP is required to disseminate all conviction data and information on pending charges that are less than a year old. The bill eliminates the requirement that, before forwarding the information to the requester in certain cases, the WSP redact all information that is not related to convictions relating to crimes against children, crimes relating to drugs, and crimes relating to financial exploitation.

The requirement that disciplinary board final decisions and information regarding dependency matters and domestic relations cases be sent to the WSP is eliminated.

Rather than asking applicants if they have been convicted of certain crimes, businesses requesting background checks must require disclosure of whether the applicant has been convicted of any crime.

The prosecuting attorney must notify the Superintendent of Public Instruction if a person employed by a school district pleads guilty to certain offenses. The requirement that the prosecutor notify the WSP, who must then notify the Superintendent of Public Instruction, is eliminated.

The Secretary of the Department of Social and Health Services is authorized to establish rules and set standards when considering conviction records and information on certain civil adjudications.

Substitute Bill Compared to Original Bill:

Technical amendments were made to clarify the Department of Social and Health Services' authority to establish rules and set standards for the consideration of the information provided by the WSP. Authorizes business and organizations to conduct background checks on multiple applicants under consideration for the same position. Other technical amendments were made.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) This is the third and final bill that came from the recommendations of the Task Force. One of the important aspects of this bill is requiring the prosecuting attorneys to notify the Superintendent of Public Instruction instead of the WSP if a person employed by a school district pleads guilty to an offense. This bill cleans up the statute and allows a better flow of information.

Out of all the background check bills that have been introduced this year, this is probably one of the more important ones. After surveying a number of non-profit agencies regarding background checks, two issues arose. One issue is cost. The second issue, which is taken care

of in this bill, is that under current law when a non-profit does request a background check that the information that they do receive back is a limited number of crimes reported and not the entire picture. Many of these organizations do a lot of transportation of youth, however the background checks received do not include driving under the influence or any other driving convictions.

The WSP supports this bill as it streamlines the dissemination of criminal history information under one statute. It also allows non-profit agencies to receive all conviction information rather than a subset of the records. Simplifying the dissemination of the criminal record information under one chapter is a step in the right direction.

(In support with amendments) The Department of Social and Health Services supports this bill with some minor amendments. The amendments would clarify the authority of the department to continue to do their business since doing background checks is necessary to continue to protect the ones they serve.

Testimony Against: None.

Persons Testifying: (In support) Representative B. Sullivan, prime sponsor; Amy Bell, YMCA, Council of Youth Agencies; and Fred Fakkema, Washington State Patrol.

(In support with amendments) Steve Young, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: None.